



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

JUN 08 2012

Kenneth A. Gross, Esq.
Skadden Arps Slate Meagher & Flom, LLP
1440 New York Avenue, NW
Washington, DC 20005

RE: MUR 6584
(formerly RR 12L-06)
Johnson & Johnson PAC
and Donald Bohn, in his
official capacity as treasurer

Dear Mr. Gross:

In the normal course of carrying out its supervisory responsibilities, the Federal Election Commission ("the Commission") became aware of information suggesting that Johnson & Johnson PAC and Donald Bohn, in his official capacity as treasurer ("the Committee"), may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). On February 24, 2012, the Committee was notified that it was being referred to the Commission's Office of the General Counsel for possible enforcement action under 2 U.S.C. § 437g. On May 31, 2012, the Commission found reason to believe that the Committee violated 2 U.S.C. § 434(b), a provision of the Act. Enclosed is the Factual and Legal Analysis that sets forth the basis for the Commission's determination.

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In the meantime, this matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

Please note that the Committee has a legal obligation to preserve all documents, records, and materials relating to this matter until notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519.

We look forward to your response.

On behalf of the Commission,



Caroline C. Hunter
Chair

Enclosures
Factual and Legal Analysis

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Johnson & Johnson PAC
and Donald Bohn, in his official
capacity as treasurer

MUR 6584

I. GENERATION OF MATTER

This matter was generated based on information ascertained by the Federal Election Commission ("Commission") in the normal course of carrying out its supervisory responsibilities, *see* 2 U.S.C. § 437g(a)(2).

II. FACTUAL AND LEGAL ANALYSIS

A. Factual Background

Johnson & Johnson PAC ("Committee") is a separate segregated fund registered with the Commission, and filed monthly reports with the Commission in February and March 2011. Donald Bohn is treasurer of the Committee. The Committee filed its 2011 February Monthly Report on February 22, two days after the filing due date, disclosing no receipts or disbursements for the reporting period. The next month, the Committee timely filed its 2011 March Monthly Report disclosing \$19,139.96 in receipts and \$32,500 in disbursements. The Committee later filed amendments to both reports disclosing additional activity, as reflected in the chart below.

Report	Date(s) of Amendment(s)	Amount of Increased Receipts	Amount of Increased Disbursements	Total Increased Activity
2011 Feb. Monthly	March 18, 2011	\$39,466.40	\$84,530.00	\$123,996.40
	October 3, 2011	NA	\$2,011.56	\$2,011.56
2011 March Monthly	October 3, 2011	\$19,496.55	\$9,523.95	\$29,020.50
	TOTAL	\$58,962.95	\$96,065.51	\$155,028.46

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Following these amendments, the Reports Analysis Division ("RAD") sent the Committee a Request for Additional Information ("RFAI") regarding the increased activity disclosed on its amended 2011 February Monthly Report dated March 18, 2011. Letter from Quy Vuong, Senior Campaign Finance Analyst, Federal Election Commission, to Donald Bohn, Treasurer, Johnson & Johnson PAC (July 6, 2011) (on file at www.fec.gov). The RFAI stated that the amended report disclosed a substantial increase in the amount of receipts and disbursements from those disclosed in the original report, and requested that the Committee clarify why the additional activity was not provided in the original report.

Responding to the RFAI, the Committee filed a Miscellaneous Document ("Form 99") stating that "due to a technical glitch in our PAC reporting software, we were unable to populate the February monthly report with the January receipt and contribution information prior to the report's February 20, 2011 deadline. Once the problem was identified and corrected, we submitted an amended report on March 18, 2011, prior to filing our March monthly report." See Form 99 filed August 4, 2011. Later, the Committee further amended its 2011 February Monthly Report on October 3, 2011, disclosing an additional \$2,011.56 in disbursements.

Referencing both the second amended 2011 February Monthly and amended 2011 March Monthly Reports, RAD sent an RFAI to the Committee on October 28, 2011, seeking clarification regarding the cumulative increase in receipts and disbursements disclosed as compared to the Committee's original filings. In response, the Committee stated on December 2, that "[d]ue to an [sic] technical error on the part of an outside vendor, the receipts were not uploaded into our software with the correct dates. This error has been corrected and the reports were amended to reflect the correct receipts." The response did not reference the increased activity in disbursements. See Form 99 filed December 2, 2011.

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According to the referral, there were three telephone calls between the Committee's consultants or counsel and the RAD analyst prior to the referral. On January 26, 2012, the RAD analyst called a consultant for the Committee and informed him that the increases in activity on the amended reports referenced in the RFAI would be referred for action, and explained that the Committee could disclose additional information on the public record if it wished to do so. Subsequently, on the same day, another consultant for the Committee called the RAD analyst to discuss why the increased activity was being referred since the Committee had provided an explanation. The RAD analyst told her that the explanation of vendor error was an inadequate response to the apparent violation, and the Committee could provide additional information on the public record if it wished to do so. On February 2, the Committee's counsel called the RAD analyst and explained that the increased activity was due to a vendor error and also due to the illness of an employee who normally files the Committee's disclosure reports. The RAD analyst explained to counsel that the Committee could disclose these circumstances on the public record and provide any other information it wished. Counsel claimed to have followed the February 2 telephone conversation with a letter reiterating the Committee's position, although RAD has no record of receiving that letter. See Response at 3.

RAD referred the Committee to the Office of General Counsel for failing to disclose \$58,962.24 in receipts and \$96,065.51 in disbursements in its original 2011 February Monthly and 2011 March Monthly Reports (hereinafter "Referral").

On February 24, 2012, this Office notified the Committee of the Referral in accordance with the Commission's policy regarding notification in non-complaint generated matters. See 74 Fed. Reg. 38617 (August 4, 2009). In its response to the notification, the Committee provided additional information regarding the technical errors it referenced in its earlier RFAI

response, stating that its problems resulted from both technical difficulties relating to a change in its outside reporting service provider from Vocus to DDC and the serious illness of the individual responsible for preparing and filing the Committee's reports. *See* Letter from Kenneth Gross, Skadden, Arps, Slate, Meagher & Flom to Jeff Jordan, Office of General Counsel (March 13, 2012) (hereinafter "Response").

The Committee states that as of January 1, 2011, it stopped using Vocus as its reporting service provider, and instead engaged DDC to assist in the preparation of its FEC Reports. Response at 2. At that time, the Committee stopped entering payroll data into the Vocus system and provided it to DDC. *Id.* The Committee's outside payroll provider, however, encountered difficulties in conforming its technology to DDC's requirements, resulting in the provider sending improperly formatted information to DDC. *Id.*

At the same time these technical difficulties were occurring, the Committee employee who was responsible for filing the Committee's disclosure report was undergoing tests for an undiagnosed illness that was affecting her ability to perform her duties. Response at 2. According to the Response, when attempting to file the 2011 February Monthly Report, the employee "mistakenly ran the report out of the Vocus system, which contained no data for that time period as a result of the switch to DDC," and this caused the Committee to file its original 2011 February Monthly Report disclosing zero receipts and disbursements. *Id.* Shortly thereafter, the employee was diagnosed with a serious illness and took leave from her position to seek treatment; she had very little recall concerning the filing of the original 2011 February Monthly Report. *Id.*

According to the Committee's response, it discovered the problem with the 2011 February Monthly Report as it prepared to file its 2011 March Monthly Report. Response at 2.

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The Committee responds that the additional \$2,011.56 in disbursements reported in the amended 2011 February Monthly Report filed on October 3, 2011, was based on a discrepancy caused by "data entry error relating to contribution checks written in January 2011" that had been signed and sent, but "listed in the database as "Queued" instead of disbursed." Response at 3.

The Committee further states that when it was preparing its 2011 March Monthly Report, there were still problems with the receipts related to the format of the file provided to DDC by the payroll vendor, and the same data entry error previously mentioned continued to cause problems with disbursements concerning checks written in February 2011. Additionally, the illness and subsequent leave of the Committee employee responsible for filing reports "likely contributed to the Committee's failure to detect and cure these problems." Response at 3.

After discovering these problems, the Committee conducted an investigation and filed amendments as soon as the problems were identified and the correct data was available. Response at 3. According to the Committee, "[a]t no time was there any intent to not disclose the Committee's activity in full." *Id.* Moreover, the Committee points out that it filed timely responses to the RFAI's and called and wrote its RAD analyst in an attempt to provide information about problems with the reports. *Id.*

To ensure that similar problems do not recur, the Committee has: (1) redistributed responsibilities for preparing and filing reports so as to not rely on one individual; (2) fully implemented the new system with the vendor, and the new system is more automated than the prior system; and (3) assisted by counsel, instituted the practice of reconciling its FEC Reports with its internal records and bank statements each time a report is filed.

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B. Legal Analysis

The Federal Election Campaign Act of 1971, as amended ("the Act"), requires committee treasurers to file reports of receipts and disbursements in accordance with the provisions of 2 U.S.C. § 434. See 2 U.S.C. § 434(a)(1) and 11 C.F.R. § 104.1(a). These reports must include, *inter alia*, the total amount of receipts and disbursements. See 2 U.S.C. § 434(b); 11 C.F.R. § 104.3. Committees are also required to disclose itemized breakdowns of receipts and disbursements and disclose the name and address of each person who has made any contribution or received any disbursement in an aggregate amount or value in excess of \$200 within the calendar year, together with the date and amount of any such contribution or disbursement. See 2 U.S.C. § 434(b)(2)-(6); 11 C.F.R. §§ 104.3(a)(3)-(4), (b)(2)-(4).

The Committee did not comply with the Act's reporting requirements when it failed to disclose \$39,466.40 in receipts and \$86,541.56 in disbursements on its original 2011 February Monthly Report, and \$19,496.55 in receipts and \$9,523.95 in disbursements on its original 2011 March Monthly Report. Therefore, there is reason to believe that the Johnson & Johnson PAC and Donald Bohn, in his official capacity as treasurer, violated 2 U.S.C. § 434(b).

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